Case Summary

Complaint against Food and Environmental Hygiene Department for impropriety in handling the withdrawal of an application for transfer of food business licence

The Complaint

The complainant and the holder of a food business licence ("licensee") jointly applied to the Food and Environmental Hygiene Department (FEHD) for transfer of the licence to the complainant. She complained against FEHD for -

(a) failing to notify her at once after the application was unilaterally withdrawn by the licensee, so that she learned of it only when she enquired of the Department about one month later; and

(b) failing to handle her application documents properly so that her personal data might be divulged.

Sequence of Events

2. The complainant and the licensee went to an FEHD office together to apply for the transfer of a food business licence. Health Inspector A ("Inspector A") received the application form and copies of their identity cards, indicating that he would pass them to Health Inspector B ("Inspector B") upon his return from vacation leave, because the latter was responsible for the district in which the food store was located. He also told the complainant to call Inspector B one month later to check progress of the application, as formalities (such as issuing the letter of approval, updating licensee information and arranging for her to sign on the approved plan) would take about one month.

3. An hour later, the licensee returned and requested to cancel the application for licence transfer. Inspector A tore up the application documents, including copies of the identity cards and threw them into his rubbish bin.

4. A month or so later, the complainant's brother called to enquire about the progress. Inspector B replied that there was no such application on file. Later, Inspector A called the complainant to explain. Aggrieved, the complainant complained to Inspector A's supervisor, who explained the sequence of events and apologised to her. To set her mind at ease, he added that with the documents destroyed, there was little chance of her personal data being divulged.

Observations and Opinions

5. Inspector A was indiscreet in handling the matter. He did not follow the departments' rules to require the licensee to submit his withdrawal request in writing. Nor did he confirm this request with the complainant. He also tore up the application documents and threw them into his rubbish bin. We do not accept FEHD's argument that Inspector A was inexperienced. He had been a Health Inspector for almost three years, which would be the normal term for any contract civil servant.

6. The complainant's concern about a possible leak of her personal data was not unfounded.

7. FEHD should also be held responsible. Before this incident, it only required the party requesting changes to write to the Department and the other party concerned. The Guidelines in Dealing with Applications for Transfer of Food Business Licences in its Operational Manual for Hygiene Services did not instruct FEHD staff to ensure that the other party was made aware of the changes. This Office considered that as the application for transfer had been signed and submitted jointly by both parties, FEHD should ensure that any significant change (such as withdrawal of application) would be notified to the other party.

8. The Department indicated that its staff should treat copies of identity cards as confidential documents, in accordance with the Code of Practice on

the Identity Card Number and other Personal Identifiers □ Compliance Guide for Data Users issued by the Office of the Privacy Commissioner for Personal Data (PCO). However, the FEHD Administrative Circular No. 21/00 □ Personal Data (Privacy) Ordinance only provided for the collection and correction of personal data. It gave no instruction on following the Compliance Guide issued by PCO or included no details about proper handling (including retention and disposal) of documents containing personal data.

9. We considered both complaint points **substantiated**.

10. Subsequently, FEHD took disciplinary action against Inspector A and issued new guidelines to remind staff to notify both parties concerned of the progress or outcome of their application for transfer and to inform the other party when one party requested withdrawal. The guidelines also required staff to file application documents properly and not destroy them without proper authorisation.

Other Observations

11. Regarding the time required for processing applications for transfer of licences, FEHD's internal guidelines stated that for a straightforward application, notification of result should be issued within 10 working days from receipt of application documents. Inspector A was over cautious in advising the complainant/applicants that it would take one month to process their application. This is not in accordance with FEHD's guidelines.

12. FEHD provides a range of services, including the issue of various food business licences as well as transfer of licences. However, its Performance Pledge booklet does not include application for licence transfer, so that applicants have no idea how long the process should take.

Conclusion

13. Overall, The Ombudsman considered this complaint **substantiated.**

Recommendations

14. The Ombudsman recommended that FEHD should -

(a) apologise to the complainant in writing;

(b) incorporate into its Operational Manual for Hygiene Services the new instructions issued after this incident;

(c) include detailed instructions in its Administrative Circular No. 21/00 – Personal Data (Privacy) Ordinance to instruct staff on how to properly handle documents containing personal data and to follow relevant guidelines issued by PCO; and

(d) include in its Performance Pledge booklet the performance pledge on handling applications for transfer of food business licences.

Responses from FEHD and its Staff

15. Inspector A admitted that he was at fault for not filing the relevant application and copies of identity cards. However, he argued that the case was unfair to him, as FEHD had no specific instructions on how to process unilateral withdrawal of application for transfer of licence and how to handle documents containing personal data. Moreover, it was stated in the application form that the party requesting any change must notify the other party involved. In this light, neither FEHD nor its staff was responsible for notifying the complainant. Besides, the complainant's personal data had not been divulged. The Ombudsman should not pursue such a trivial complaint.

16. FEHD accepted our recommendations and pointed out that staff encountering any special situation should consult his supervisor or he would be held responsible for his actions. Nevertheless, the incident occurred on the last working day before the Lunar New Year and Inspector A had made that mistake while acting for his colleague.

17. Both FEHD and Inspector A held that the processing time of one month as mentioned by Inspector A actually included the time for other administrative formalities after the issue of a letter of approval. Inspector A was, therefore, not overly cautious.

Our Comments

18. FEHD should improve its procedures for ensuring that all parties involved in an application for licence transfer were aware of the changes made. This Office accepts that it is impossible for Government departments to formulate operational procedures to cover every possible scenario. In special circumstance, staff should use their own judgement or consult their supervisors. In this case, when the licensee withdrew his application just **one hour** later and the other party was not present, the staff should have been immediately alert and handle the case with caution. Moreover, it is irrelevant whether or not it is before or after a holiday : staff should be alert at all times during office hours. Since Inspector A's responsibilities were the same as Inspector B's, he should have no difficulty taking over the latter's duties temporarily.

19. Improper handling of documents resulting in a leak of personal data could be an offence. This Office does not see this as a "trivial" matter.

20. Regarding the time for processing an application, in principle the new licensee should be able to start his business on receipt of the letter of approval. FEHD and Inspector A should not have taken into account the time for completing other administrative formalities.

Final Remarks

21. The Ombudsman maintained her conclusion that the complaint was **substantiated** and FEHD was requested to implement the recommendations as soon as possible.

Office of The Ombudsman

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